

SERVICE DATE – DECEMBER 28, 2012

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 295 (Sub-No. 6X)

THE INDIANA RAIL ROAD COMPANY—ABANDONMENT EXEMPTION—
IN MONROE COUNTY, IND.

Decided: December 27, 2012

On March 28, 2005, The Indiana Rail Road Company (INRD) filed a notice of exemption under 49 C.F.R. § 1152 Subpart F to abandon a 2.44-mile portion of its Ellettsville Branch from milepost Q216.13 near Loesch Road to the end of the line at Ellettsville, milepost Q213.69, in Monroe County, Ind. Notice of the exemption was served and published in the Federal Register on April 15, 2005 (70 Fed. Reg. 19987-88). By decision and Notice of Interim Trail Use (NITU) served on May 17, 2005, the proceeding was reopened and a 180-day period was authorized for the Monroe County Parks and Recreation Department to negotiate an interim trail use/rail banking agreement with INRD for the right-of-way involved in this proceeding.¹ By decisions served on November 8, 2005, and May 9, 2006, the NITU negotiating period was extended until November 9, 2006.

On September 29, 2006, Indiana Trails Fund, Inc. (ITF), and the Monroe County Parks and Recreation Board, on behalf of Monroe County, jointly filed a request, pursuant to 49 C.F.R. § 1152.29(f), for the substitution of ITF as the interim trail user. By decision served October 18, 2006, the Board approved the substitution of ITF as the interim trail user. By decisions served on November 9, 2006, and May 7, 2007, the NITU negotiating period was further extended until November 4, 2007. Prior to the expiration of the negotiating period, ITF and INRD notified the Board on October 9, 2007, that the two parties had reached a trail use agreement.

On December 18, 2012, ITF and the Monroe County Board of Commissioners, on behalf of Monroe County (Monroe County), filed a joint petition pursuant to 49 C.F.R. § 1152.29(f) to reopen the above-captioned abandonment exemption proceedings, vacate the existing NITU, and issue an appropriate replacement NITU to the new trail user, Monroe County, effective on December 28, 2012. INRD has no objection to the substitution of Monroe County as the trail user, provided that Monroe County assumes the responsibilities set forth in 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. Petitioners have submitted a copy of the extant NITU and a statement by Monroe County of its willingness to assume financial responsibility for interim trail use and rail banking pursuant to 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. Monroe County has acknowledged that use of the right-of-way is subject to possible future reconstruction and

¹ The decision and notice also made the exemption subject to several environmental conditions.

reactivation of the right-of-way for rail service. Petitioners' submission meets the requirements of 49 C.F.R. § 1152.29(f). Accordingly, petitioners' request will be granted and a replacement NITU will be issued.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. The NITU served on October 18, 2006, is vacated.
3. A replacement NITU applicable to Monroe County as interim trail user is issued, effective on the service date of this decision and notice.
4. The new trail user is required to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the new user's continuing to meet the financial obligations for the right-of-way.
6. If the new trail user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
7. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.